

R156. Commerce, Occupational and Professional Licensing.

R156-58. Preneed Funeral Arrangement Act Rules.

R156-58-101. Title.

These rules are the "Preneed Funeral Arrangement Act Rules".

R156-58-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 58, as used in Title 58, Chapters 1 and 48, or these rules:

(1) "Contract" means a guaranteed preneed funeral arrangement contract.

(2) "Contract seller" as set forth in Section 58-58-13 means the licensed preneed funeral arrangement provider.

(3) "Guaranteed product contract" means that the goods or services selected in the contract will be provided at the time of need regardless of the market price at the time of need, and that if goods or services selected in the contract are not used, the amount paid for those goods and services and any unexpended earnings thereupon will be distributed to the preneed contract buyer or the buyer's representative or in their absence, the buyer's heirs and beneficiaries.

(4) "Recipient of goods and services" is synonymous with "beneficiary" as defined in Subsection 58-58-2(2), and is used herein to avoid confusion with various common meanings of the term "beneficiary".

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 58, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-58-502.

R156-58-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 58.

R156-58-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-58-302a. Qualifications for Licensure - Examination Requirements.

(1) Each applicant for licensure as a preneed funeral arrangement sales agent shall pass the Utah Preneed Funeral Arrangement Law and Rules examination.

R156-58-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 58, is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-58-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) selling preneed funeral arrangements when the licensee is not associated with or employed by a preneed funeral arrangement provider;

(2) selling a preneed funeral arrangement funded by insurance when the licensee has not obtained approval to do so from the preneed funeral arrangement provider the licensee represents;

(3) selling an insurance policy to fund a preneed funeral arrangement contract naming a preneed funeral arrangement provider as beneficiary, prior to executing the underlying preneed funeral arrangement contract;

(4) selling a preneed funeral arrangement without executing an approved preneed funeral arrangement contract within ten working days following the sale;

(5) failing to report preneed funeral arrangement sales agent association or employment as required by Chapter 58, Title 58 and these rules;

(6) failing to furnish accurate and understandable price information to consumers;

(7) exercising undue influence over a consumer thereby requiring or causing the

consumer to purchase goods or services beyond those the consumer desires or needs;

(8) collecting or receiving money from the sale of an insurance policy funding a preneed funeral arrangement contract unless the licensee is collecting or receiving the money as a licensed insurance agent or broker;

(9) violating Section 31A-23-310, containing the fiduciary duties of a trustee with respect to money collected or received as a licensed insurance agent or broker;

(10) receiving payment of life insurance proceeds beyond the provider's insurable interest in the recipient of the goods and services of a preneed contract as set forth in R156-58-616(1);

(11) failing to deposit and trust or verify the deposit and subsequent trust of 100% of money received from the sale of a guaranteed preneed funeral arrangement contract to be funded by money placed in trust, within the time periods specified by Section 58-58-9 and these rules;

(12) failing to ensure that the provider's trust agreement conforms to the requirements of Section 58-58-10, including among other requirements that money is deposited into trust in the name of the recipient of goods and services and the contract number, and that the trust establishes a separate account within the trust for each recipient of goods and services and contract number, separately accounting for each contract with regard to trust earnings and disbursements;

(13) withdrawing money from a trust account in excess of any maximums established by these rules;

(14) converting a preneed funeral arrangement funded by money placed in trust to insurance except as provided by these rules;

(15) failing to provide guaranteed goods and services at time of need in accordance with the terms of a preneed funeral arrangement contract;

(16) retaining life insurance proceeds of a policy purchased to fund funeral arrangements but not accompanied by a preneed funeral arrangement contract, unless the licensee provides an equivalent value of funeral goods and services;

(17) failing to comply with the annual reporting requirements as required by Section 58-58-13 and these rules;

(18) failing to report known violations of governing law or rules by other licensees;

(19) failing to comply with any other provisions of Chapter 58, Title 58, or these rules, not specifically referenced in this section;

(20) failing to comply with applicable state or federal statutes, regulations, or other governing authority;

(21) selling a preneed funeral arrangement contract in a form not approved by the division, or not in compliance with the provisions of Title 58, Chapter 58, or these rules; and

(22) failing to handle, remit or deposit funds received in payment for a preneed funeral arrangement contract by placing the funds in trust or remitting the funds to an insurance carrier as is required by the contract terms and conditions and by all laws regulating the sale of preneed funeral arrangements and insurance and annuity policies.

R156-58-601. Requirement to Operate from a Licensed Funeral Establishment.

A licensed preneed funeral arrangement provider shall conduct business as a licensee only from the facilities of a licensed funeral service establishment which serves to qualify the licensee under the provision of Subsection 58-58-5(1)(c).

R156-58-602. Sale of Funeral Goods or Services Not Delivered Contemporaneous with Sale Considered Preneed Funeral Arrangement Sale.

The sale of funeral goods or services to a buyer by any person who does not deliver such goods or services at the time of the sale or in close proximity to the sale and such later delivery is agreed upon between the buyer and seller either orally or in writing constitutes the sale of a preneed funeral arrangement. Such sale may be engaged in only by persons licensed to engage in preneed funeral arrangement sales. This applies to persons including cemeteries, monument manufacturers and sellers, casket manufacturers and

sellers, and vault manufacturers and sellers.

R156-58-603. Termination of Sales Agent - Notification to Division.

A licensed preneed funeral arrangement provider shall notify the division of termination of association of a preneed sales agent with that licensed provider within ten days after termination of association. Notification shall be made on forms provided by the division.

R156-58-604. Affiliation of Licensed Sales Agent with Licensed Provider.

(1) When a licensed sales agent enters association with a licensed provider and such association is not currently registered with the division under the provisions of Subsection 58-58-5(2)(f), or this subsection, the licensed provider shall:

(a) file an notice of association with the division on forms provided by the division within ten days after commencement of association; and

(b) pay a fee established by the department under Section 63-38-3.2.

(2) The licensed provider shall provide the licensed sales agent with a copy of the notice filed with the division.

(3) If a notice of association is not filed by the licensed provider within ten days after association, the sales agent may not represent the licensed provider with respect to any preneed funeral arrangement until such notice is filed.

R156-58-605. Licensure of Persons Selling Preneed Funeral Arrangements to be Funded by Proceeds from Insurance or Annuity Policy.

(1) Any person who sells or represents that they will or intend to sell specific funeral goods or services, represents that goods or services will be provided by a specific funeral establishment, represents that specified amount of money will purchase defined funeral goods or services, or represents that payment for those goods or services to be provided at some future date shall be accomplished through the purchase of a life insurance policy or annuity policy, is engaged in the sale of a preneed funeral arrangement and is required to be licensed as a preneed funeral arrangement provider or sales agent.

(2) Any person who sells or represents that they will or intend to sell an insurance or annuity policy which will provide a certain benefit at time of death, represents that such benefit will be available to pay for funeral arrangements and no reference is made to specific funeral goods or services, to the cost of specific funeral goods or services, or to the services of a specific funeral service establishment, is not engaged in the sale of a preneed funeral arrangement and is not required to be licensed as a preneed funeral arrangement provider or sales agent.

(3) Nothing in this section shall be interpreted to affect or modify any requirement under state law regarding licensure of persons engaged in the sale of insurance or annuity policies.

R156-58-606. Preneed Funeral Arrangement Contracts Funded by Insurance or Annuity Policy.

(1) The beneficiary designation on any insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be a contingent designation using such wording as "as their interests may appear under a funeral arrangement contract" with information identifying the funeral arrangement contract, or other substantially equivalent beneficiary designation language.

(2) Monies received by a licensee in payment for an insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be handled in accordance with the contractual terms and conditions of the policy and the insurance laws applicable to the policy.

R156-58-607. Contract Forms - Division Model - Certification Required by Provider.

(1) To assist applicants for a provider's license and provider licensees meet the requirements of Section 58-58-8, the division shall publish a model guaranteed preneed funeral arrangement contract form which meets the requirements of Section 58-58-8.

(2) In accordance with the provisions of Subsection 58-58-8(1) a provider must submit to the division a copy of every contract form it intends to market and receive approval of each contract form before the contract form may be used in marketing the licensee's preneed funeral arrangement plan under that contract form.

(3) If a proposed contract form is in substantially the same form as the model contract, the applicant or licensee requesting approval of the contract form may accompany the contract form with the provider's certification that the form is substantially the same as the model contract form. The certification shall contain a listing of each and every deviation of the proposed contract from the model contract.

(4) If a proposed contract form is substantially different from the model contract form, the applicant or licensee requesting approval of the contract form shall obtain an opinion from independent legal counsel representing that the contract form complies with the provisions of Section 58-58-8, and these rules. Such opinion shall be accompanied by an explanation of deviations between the proposed contract from the model contract.

(5) In accordance with the provisions of Subsection 58-58-8(2)(a), easy-to-read type size is hereby defined to be of a type size large enough to accommodate no more than six lines per vertical inch and no more than 15 characters per horizontal inch.

R156-58-608. Contract Notice Regarding Medicaid.

The following notice shall appear in all contracts:

Notice: Under Federal regulations, a Medicaid recipient whose preneed contract is revoked, canceled, or mutually rescinded may become ineligible for Medicaid benefits. Before permitting or causing your preneed agreement to be revoked, canceled or rescinded, you should seek the advice of an attorney or a Medicaid representative.

R156-58-609. Retention of Completed or Terminated Contracts.

Contracts shall be maintained for a period of five years after the contracts have been serviced and obligations of the provider have been completed, or after the contracts have been otherwise terminated. The contracts shall be filed and maintained with a copy of the death certification or burial transit permit with respect to those contracts for which services have been provided, and with sufficient documentation to clearly identify the basis for termination of otherwise terminated.

R156-58-610. Cash Advance Item Prohibited Unless a Guaranteed Product.

A cash advance item as defined in 16 CFR Part 453, Funeral Industry Practices Trade Regulation Rule, of the Federal Trade Commission is prohibited in a preneed funeral arrangement contract unless the item is a guaranteed product permitting the contract to meet the requirements of Subsection 58-58-8(2)(d).

R156-58-611. Use of Funds in Trust Account to Purchase Insurance or Annuity Policy.

A provider may convert a contract funded by monies held in trust with a contract funded by the proceed from an insurance or annuity policy provided:

(1) the buyer consents in writing to the conversion after full disclosure of the consequences of the transaction in writing by the provider;

(2) the buyer's consent is given without coercion, threat, concealment of material fact, undue influence, or other prejudicial influence inconsistent with the buyer's best interest;

(3) the provider uses all monies held in the individual trust account, including interest, as premium for the purchase of the life insurance or annuity policy, unless otherwise directed in writing by the buyer;

(4) the new preneed funeral arrangement contract must be in writing and must provide for goods and services which at least equal to those required of the provider under the original contract, and

(5) the new contract meets all requirements of Title 58, Chapter 58, and these rules.

R156-58-612. Conversion of Trust Accounts Under Prior Law Prohibited.

Conversion of funds held in trust which was established under any law regulating preneed funeral arrangements prior to the adoption of Title 58, Chapter 58, may not be converted to a trust under the provisions of Title 58, Chapter 58, but shall continue to be held in trust under the terms and conditions of the predecessor law.

R156-58-613. Prohibition Against Provider Accepting Payment in a Form Other Than Cash, Cash Equivalents, or Negotiable Instruments.

A provider may accept in payment for a preneed funeral arrangement contract only cash, cash equivalents, or negotiable instruments which are readily convertible to cash.

R156-58-614. Provider Expenditure of Earnings from Trust Account.

(1) In accordance with Subsection 58-58-11(1), earnings of a preneed funeral arrangement trust account shall be available to the provider for expenditure toward reasonable trustee expenses of administering a trust account, not to exceed the lesser of the earnings remaining in the trust account or 1% of the entire trust account, plus any amounts necessary to pay taxes incurred on the entire trust account's earnings.

(2) In accordance with Subsection 58-58-11(2), earnings of an individual account within the trust shall be available to the provider for expenditure toward other authorized reasonable provider expenses incurred against the individual account, not to exceed earnings totaling 30% of the sales amount of the respective preneed funeral arrangement contract.

(3) Remaining earnings of individual accounts within the trust shall, except as provided in Subsection 58-58-11(4)(b), remain in each individual account within the trust to pay by account, the costs of providing the goods and services required under respective preneed funeral arrangement contracts.

(4) In accordance with Subsection 58-58-11(4)(a), the provider shall be paid remaining trust account earnings after furnishing the goods and services required under respective preneed funeral arrangement contracts.

R156-58-615. Maximum Life Insurance Proceeds Payable to Provider.

(1) Preneed life insurance proceeds payable to a provider shall not exceed the provider's insurable interest in the recipient of goods and services which, by definition, shall not exceed the provider's current retail price for the goods and services provided, as determined by the provider's price list in effect at the recipient of goods and service's death.

(2) Excess preneed life insurance proceeds not paid to the provider shall be returned to the owner of the life insurance policy or his heirs and beneficiaries unless otherwise designated by the owner or his heirs and beneficiaries.

R156-58-616. Reporting Requirements.

(1) In accordance with Section 58-58-13, each provider or contract seller who has discounted the sale of contracts but who has outstanding contracts and each currently licensed provider shall submit an annual report to the division by April 15 of each year.

The report shall be submitted on forms available from the division or their equivalent and shall include:

(a) a statement of compliance certifying:

(i) that all payments received from the sale of contracts have been:

(A) placed in the provider's trust account in accordance with Section 58-58-9 and administered in accordance with Sections 58-58-10 through 58-58-12 and these rules; or

(B) submitted to the insurance company whose insurance or annuity policy funds the contract;

(ii) that complete and accurate information concerning the preneed funeral arrangements by the provider or the provider's sales agents was furnished or made available to the independent certified public accountant who prepared the report of agreed upon procedures; and

(iii) that the annual report is complete and accurate;

(b) a report of agreed upon procedures on forms available from the division or their equivalent completed by an independent certified public accountant licensed under

Title 58, Chapter 26, which reports upon:

- (i) reconciliation of trust account balances to the annual report; and
- (ii) reconciliation of insurance in force to the annual report;
- (c) an exhibit listing preneed contracts sold prior to April 29, 1991, funded by money, 75% of which is required to be maintained in the name of the contract buyer in the contract seller's trust account as provided in Section 58-58-10, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different, and balance due; the individual trust account number and amount trusted; and the trust earnings, earnings used, and trust balance;
- (d) an exhibit listing preneed contracts sold after April 28, 1991, funded by money, 100% of which is required to be maintained in the name of the contract buyer in the provider's trust account as provided in Section 58-58-10, which shall include at a minimum the information required under subsection (c);
- (e) an exhibit listing preneed contracts funded by money placed in trust which were serviced, revoked, rescinded, or amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different; the individual trust account number and trust balance at the recipient of goods and service's death; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced;
- (f) an exhibit listing preneed contracts sold after April 28, 1991, funded in whole or in part by insurance, which shall include at a minimum: the contract number, date, amount, recipient of goods and services and buyer if different; the insurance company; the policy number, policy holder, and face amount; and
- (g) an exhibit listing preneed contracts funded by insurance which were serviced, revoked, rescinded, or otherwise amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services, and buyer if different; the insurance company; the policy number and policy holder; the policy proceeds; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced.

R156-58-617. Maximum Revocation Fee.

(1) If a buyer defaults under a guaranteed preneed funeral arrangement contract, the provider may retain a revocation fee from the trust corpus, not to exceed 25% of the amount received from the sale of the contract and trust earnings thereupon, provided the revocation fee is clearly identified in the contract.

(2) The revocation fee shall not be in an amount which results in the provider receiving proceeds from the trust in excess of that permitted under Subsection R156-58-615(2).

R156-58-618. Conflict with Federal Laws or Rules.

In the event of a conflict between the requirements of federal law or rules, in particular the Federal Trade Commission Rules, and Title 58, Chapter 58, Preneed Funeral Arrangement Act or these rules, federal law or rules shall govern.

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**PRENEED FUNERAL ARRANGEMENT
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